

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ALISI MAPA,

Petitioner,

v.

GLORIA HENRY,

Respondent.

No. C 04-3342 MMC (PR)

**ORDER DENYING MOTION FOR  
NEW TRIAL AND REQUEST FOR  
CERTIFICATE OF  
APPEALABILITY**

**(Docket Nos. 22 & 23)**

On August 17, 2004, petitioner, a California prisoner proceeding pro se, filed the above-titled petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On May 18, 2007, respondent's motion to dismiss the petition was granted. Now before the Court is petitioner's motion, filed June 6, 2007, for a "new trial" pursuant to Rule 59 of the Federal Rules of Civil Procedure.

Where, as here, the court's ruling has resulted in a final judgment or order, a motion for reconsideration may be based on Rule 59(e) of the Federal Rules of Civil Procedure. In this instance, however, reconsideration is not available to petitioner pursuant to Rule 59(e) because the request was submitted after the time for filing such a motion had passed. See Fed. R. Civ. P. 59(e) (providing motion must be filed no more than ten days following entry of judgment). Moreover, petitioner's motion presents no grounds for reconsideration. A motion for reconsideration under Rule 59(e) "should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the law." McDowell v.

1 Calderon, 197 F.3d 1253, 1255 (9th Cir. 1999) (citation omitted) (en banc).

2 Accordingly, petitioner's motion "for a new trial" is hereby DENIED.

3 On June 18, 2007, petitioner filed a notice of appeal, which the Court construes as  
4 including a request for a certificate of appealability pursuant to 28 U.S.C. § 2253(c) and  
5 Federal Rule of Appellate Procedure 22(b). See United States v. Asrar, 116 F.3d 1268, 1270  
6 (9th Cir. 1997). Petitioner, however, has not shown "that jurists of reason would find it  
7 debatable whether the petition states a valid claim of the denial of a constitutional right and  
8 that jurists of reason would find it debatable whether the district court was correct in its  
9 procedural ruling." See Slack v. McDaniel, 529 U.S. 473, 483 (2000).


10 Accordingly, the request for a certificate of appealability is hereby DENIED.

11 The Clerk shall forward this order, along with the case file, to the United States Court  
12 of Appeals for the Ninth Circuit, from which petitioner also may seek a certificate of  
13 appealability. See Asrar, 116 F.3d at 1270.

14 This order terminates Docket Nos. 22 and 23.

15 IT IS SO ORDERED.

16 DATED: June 27, 2007

17   
18 MAXINE M. CHESNEY  
19 United States District Judge  
20  
21  
22  
23  
24  
25  
26  
27  
28